deemed to have been aware of the terms of the sale agreements and of the unlicensed nature of the first respondent's business. It does not appear to their Lordships, therefore, that the difficulty can be met simply by adjourning the matter in order to enable the parties to prepare further arguments, for there are substantial questions both of law and fact which are best determined and, as far as issues of fact are concerned, can only be determined by the courts of Malaysia.

Their Lordships will, accordingly, advise His Majesty the Yang di-Pertuan Agong that the appeal from the decision of the Federal Court of 4 August 1983 should be allowed with costs to be paid by the first respondent in the High Court and the Federal Court and before the Board; that the order of the High Court dismissing the appellant's application be discharged; but that the originating summons should now be remitted to the Supreme Court for the determination of all questions of fact and law arising out of the new points now taken on behalf of the second respondent. It would, in their Lordships' view, be right that the second respondent should be restricted to the points arising out of the Rules and the unlicensed nature of the first respondent's business which have been canvassed before their Lordships and that the specific matters relied upon by the second respondent should be formally pleaded so that there can be no misunderstanding with regard to the issues of fact and law to be determined, but this is, of course, a matter entirely for the Supreme Court to determine, as is the question of whether there should be a further remission to the High Court of any issue of fact which falls to be determined.

Since the hearing before the Board their Lordships have been informed that the taxed costs of the second respondent which were ordered by the Federal Court to be paid by the appellant have in fact been paid. Whether in the light of their Lordships' advice all or any of such costs ought now to be ordered to be repaid is a matter for which no argument was addressed to their Lordships and, in their Lordships' view, it is a matter which is more appropriately dealt with by the Supreme Court at the conclusion of any further hearing.

Order accordingly.

Solicitors: *Masons*; *Clifford Chance*; *Philip Conway Thomas & Co.*

Reported by *Prof Ahmad Ibrahim*

SINGAPORE REPORTS

Chan Sew Nang v Sindo Pasir Pte Ltd

HIGH COURT (SINGAPORE) – SUIT NO 1680 OF 1985
COOMARASWAMY J
23 JANUARY 1989

Shipping – Freight charges for carriage of goods – Claim for damage to goods cannot be deducted from freight – Liability for freight can be avoided only in limited circumstances

The plaintiffs applied for summary judgment under O 14 of the Rules of the Supreme Court 1970 against the defendants with regard to a claim of $79,976.05 for freight charges for the carriage of goods for the defendants. The application was heard before the registrar who ordered that judgment be entered for the sum of $39,167.05 and that the defendants be granted unconditional leave to defend the action for the balance of the claim. The plaintiffs appealed against the latter order.

Held, allowing the appeal:

(1) It is an established principle of law that as long as delivery of the goods shipped has been made, freight must be paid. There cannot be deducted from the freight any claim for damage to the goods. Liability for freight can be avoided only when the goods are delivered in such a condition that they are substantially and in a mercantile sense different from those shipped.

(2) An unqualified admission by the defendants that $79,967.05 was due to the plaintiffs was made even after summary judgment had been applied for. The defendants had made no effort to qualify or explain away that admission.

Cases referred to

1 *Dakin* v *Oxley* (1864) 10 LT 268 (folld)
2 *Asfar* v *Blundell* [1896] 1 QB 123 (folld)

Chew Teck Lim for the appellants/plaintiffs.
Fong Chee Yang for the respondents/defendants.

Cur Adv Vult

Coomaraswamy J: The plaintiffs claimed a sum of $79,967.05 for freight charges for the carriage of goods for the defendants.

The plaintiffs applied for summary judgment under O 14 of the Rules of the Supreme Court 1970. This application was heard before the registrar who made the following orders:

(a) judgment be entered for the sum of $39,167.05 and costs of $700; and
(b) defendants be granted unconditional leave to defend this action for the balance of the claim with costs in the cause.

The plaintiffs have appealed against the order granting leave to defend the balance of the claim. The defendants have not appealed. The plaintiffs' appeal is allowed by me and judgment for the sum of $40,800 with costs was

entered. We are here concerned only with the order granting judgment for this balance sum.

The defendants' defence for the claim for $40,800 can be found in paras 14, 15, 16 and 17 of the affidavit of Kok Chu Pa filed on 13 April 1985. They contended that a sum of $40,800 for 'E 3 clearance' of the plaintiffs' vessels in Indonesia would be handed over to the plaintiffs to be given to CV Celcon Aneka. The plaintiffs have failed to forward this cash advance to CV Celcon Aneka. This would give rise to a counterclaim for this amount.

The defendants had also relied upon a breach by the plaintiffs in refusing to carry on with the work of transportation of the sand in their vessels. They contended that this was a wrongful repudiation on the part of the plaintiffs. This contention, however, is not supported by any documentation or other evidence adduced.

The plaintiffs in response have denied these allegations. They maintained that the vessels were withdrawn from the service of the defendants by reason of their default of payment of hire. The hire was due for payment within seven days of the presentation of invoices. The plaintiffs had referred to the exhibits 'KCP 16' and 'KCP 17' in the affidavit of Kok Chu Pa filed on 13 April 1985 on behalf of the defendants.

These exhibited letters were written by the defendants acknowledging that there was an outstanding amount of $69,767.05 due to the plaintiffs. This sum is lesser than the claim of $79,967.05 by $10,200. The letters 'KCP 17' and 'KCP 18' had mentioned that the sum of $10,200 had been paid to one 'Miss Tan' of the plaintiffs.

It is an established principle of law that as long as delivery of the goods shipped has been made, freight must be paid. There cannot be deducted from the freight any claim for damage to the goods. See *Dakin* v *Oxley*.[1] Liability for freight can be avoided only when the goods are delivered in such a condition that they are substantially and in a mercantile sense different from those shipped: see *Asfar* v *Blundell*.[2]

These cases limit the types of counterclaim or defences which may be available against claims for freight charges. From the affidavits filed by the defendants, no acceptable defence has been adduced.

A further affidavit was filed on 16 April 1986 by the plaintiffs after the notice of appeal was filed. There is exhibited as 'CSN 1' to this affidavit an unqualified admission addressed to the plaintiffs signed by two directors of the defendants in the name of the defendants stating that $79,967.05 (ie the full sum claimed in this action) was due to the plaintiffs. The defendants asked that confirmation of this be given to the defendants' auditors; this was done on 16 January 1986.

The defendants stated that the sum claimed to be due to the plaintiffs was reflected in the defendants' account as at 30 September 1985. The application for summary judgment was made on 8 March 1985 and the application was heard on 25 November 1985. This is an unqualified admission of debt by the defendants made even after summary judgment had been applied for. In spite of the appeal coming before me well after four weeks of the filing of the plaintiffs' affidavit on 16 April 1986, the defendants made no effort to qualify or explain away that admission.

For these reasons stated earlier and on the defendants' unqualified and unexplained admission, the appeal must be allowed with costs and judgment entered accordingly for the balance of the claim.

Appeal allowed.

Solicitors: *Shyam & Chew* ; *Cheng Fong & Tan.*

Reported by *Ng Sheau Jiuan*

Globe Trawlers Pte Ltd v National Employers' Mutual General Insurance Association Ltd & Anor

HIGH COURT (SINGAPORE) – SUIT NO 4179 OF 1981
THEAN J
17 JANUARY 1989

Insurance – Fire policy taken out by plaintiffs with first defendants – Policy covered fishing trawlers under construction – Occurrence of fire – Substantial damage caused – Dispute on first defendants' liability – Whether there was material misdescription of property to be insured – 'One complete unit of wooden fishing trawler' – Meaning of – Whether damage caused by plaintiffs' wilful act

Words and Phrases – 'One complete unit of wooden fishing trawler'

The plaintiffs were incorporated with the objects of building coastal fishing trawlers and other vessels. Soon after incorporation, the plaintiffs embarked on the construction of the two fishing trawlers, the 'Coastal Monitor II' and the 'Super Trawl'. The plaintiffs took out fire policies on the two vessels with the first defendants through the second defendants who were insurance brokers. In the policy, the 'Super Trawl' was described as 'one complete unit of wooden fishing trawler with engine motor and accessories and equipment'.

A fire broke out in the plaintiffs' workshop one day and at the time of the fire, the 'Super Trawl' was substantially built but not wholly completed. The fire destroyed or damaged the bow, the forward deck and the cabin of the vessel. The 'Coastal Monitor II', however, was not burnt but there were cracks on the glue at the timber joints and hull.

The first defendants contended that there was a material misdescription of the property to be insured in the proposal forms submitted for insurance in that the words 'complete unit